Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

JOHN C. ADAMS, JR.,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the court's charge on self-defense violate the petitioner's due process right to trial before a jury properly instructed on the theory of defense supported by the evidence in this case?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Petition for a Writ of Certiorari	1
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	3
Reasons for Granting the Writ	9
Conclusion	11

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Government of the Virgin Islands v. Smith, 949 F.2d 677 (3d Cir. 1991) 10

Holloway v. McElroy, 632 F.2d 605 (5th Cir. 1980) 10

Isaac v. Engle, 646 F.2d 1129 (6th Cir. 1980) 10

Quercia v. United States, 289 U.S. 466 (1933) 11

Smart v. Leeke, 856 F.2d 609 (4th Cir. 1988) 10

Tennon v. Ricketts, 642 F.2d 161 (5th Cir. 1981) 10

Washington v. Texas, 388 U.S. 14 (1967) 9

STATE CASES

State v. Carter, 232 Conn. 537 (1995) 9

State v. Moore, 31 Conn. 479 (1863) 9

FEDERAL STATUTE

28 U.S.C. § 1257(a) 1

STATE STATUTE

Conn. Gen. Stat. § 53a-19(b) 2, 10

Conn. Gen. Stat. § 53a-55(a) 2

Conn. Gen. Stat. § 53a-100(a) 3

PETITION FOR A WRIT OF CERTIORARI

The petitioner, John C. Adams, Jr., petitions for a writ of certiorari to review the judgment and opinion of the Supreme Court of the State of Connecticut.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Connecticut was rendered on April 25, 2000, and was published at 252 Conn. 752. It is printed as Appendix A to this petition. The opinion of the Connecticut Appellate Court rendered on April 13, 1999, and was published at 52 Conn. App. 643. It is printed as Appendix B to this petition.

JURISDICTION

The Connecticut Supreme Court rendered the final decision on the petitioner's direct appeal on April 25, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . .

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall . . . deprive any person of . . . liberty . . . without due process of law. . . . "

Section 53a-19 of the Connecticut General Statutes proves, in pertinent part:

"(a) Except as provided in subsection[ ] (b) . . . of this section, a person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, and he may use such degree of force which he reasonably believes to be necessary for such purpose; except that deadly physical force may not be used unless the actor reasonably believes that such other person is (1) using or about to use deadly physical force, or (2) inflicting or about to inflict great bodily harm.

"(b) Notwithstanding the provisions of subsection (a) of this section, a person is not justified in using deadly physical force upon another person if he knows that he can avoid the necessity of using such force with complete safety (1) by retreating, except that the actor shall not be required to retreat if he is in his dwelling, as defined in section 53a-100. . . .

Section 53a-55(a) of the Connecticut General Statutes provides in pertinent part: "A person is guilty of manslaughter in the first degree when: . . . (3) under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person.

Section 53a-100(a) of the Connecticut General Statutes provides in pertinent part: "The following definitions are applicable to this part: . . . (2) "dwelling" means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present; (3) "night" means the period between thirty minutes after sunset and thirty minutes before sunrise.

STATEMENT OF THE CASE

This is the tragic case of a teenage boy, victimized along with his mother by years of horrifying abuse at the hands of a brutal and drunken father, who in the course of yet another assault stabbed and killed his abuser.

In October of 1993 the petitioner was exactly two weeks past his sixteenth birthday. He lived with his mother, a New Haven school teacher, and his younger brother in a house in an adjoining town which was owned jointly by his two parents. He attended a local public high school.

His parents, although still married, had been separated for years and his father lived with his girlfriend and her son in an apartment located elsewhere in the same town. He kept a key to the house, however, and occasionally spent nights there. Mrs. Adams had agreed to let him stay at the house Tuesday, Wednesday and Thursday nights if he wished, since he was less likely to be drunk those nights, but he only sporadically did so and often would go two weeks at a time without seeing his wife or his children.

When he did visit, as earlier before he had moved out, the elder Mr. Adams created a nightmare for his family. An out-of-control alcoholic, he was verbally and physically abusive to the entire family. He once bashed the petitioner's head on the ground and kicked him for missing a cast on a fishing trip. He had thrown the petitioner against a cocktail table, lacerating his lip. He struck him with a baseball bat, dislocating his knee. He pushed him down the basement stairs in front of guests, pushed him down stairs on other occasions as well, often threatened to shoot him, and routinely berated him, telling him he was worthless and would never amount to anything in life. He had chased the petitioner out of the house and down the street, had been seen dragging the petitioner out of the house by the neck, punched him, threw beer bottles at him, threw his stereo down a flight of stairs, threw him against the wall, kicked him, and late one night urinated in the petitioner's bedroom closet and then awakened the petitioner and forced him to clean up the mess. He was equally abusive to the petitioner's mother, hitting her, throwing her to the ground and swearing at her in front of the children.

Mr. Adams always was armed with knives, which he carried in his pocket along with a sharpening stone. He kept numerous guns, rifles, ammunition, knives, cans of combustible fuel and a bow and arrow readily accessible. He enjoyed trapping and killing small animals, which he skinned and kept their pelts hanging in the basement. He had shot a squirrel with a revolver from the bathroom window, in the petitioner's presence when the petitioner was very young, had forced the petitioner to accompany him on one occasion while he pursued with a gun a

person he believed had stolen the petitioner's bicycle, and just a week before the events here had hit the petitioner across the head with a BB gun and chased him down the street with it.

Although he subjected his son to a constant stream of physical and emotional abuse, Mr. Adams otherwise took no interest in the boy. He never visited his school and only once attended a sporting event in which his son participated.

Not surprisingly, the petitioner reached his teenage years a troubled youngster. He was a disciplinary problem in school and often cut classes. On the morning of October 12, 1993, he was informed by the assistant principal of the high school that he would be suspended for five days because of absenteeism and that his parents would be notified. Tragically, it was the father who was called, at his place of employment.

After school that day, the petitioner and his girlfriend took the school bus to his house, where they fell asleep lying on his bed watching television. They were awakened by the petitioner's father bursting through the bedroom door and yelling at the petitioner about the suspension. The father swore at the petitioner, calling him names and telling him he was "no good." He left the room and the petitioner followed him. In the hallway just outside the bedroom, the petitioner asked his father not to come into the bedroom without knocking. Enraged, Mr. Adams grabbed the petitioner and threw him against the bathroom door. He put his hands around the petitioner's neck and began to choke him while yelling at him and calling him names. The choking was so severe

that the petitioner could not breath. Eventually, he released the petitioner and the petitioner returned to the bedroom where his girlfriend observed that he was bleeding from the mouth and had red marks around his neck.

After a few minutes, the petitioner got up off the bed for a second time, put his pocket knife into his pocket and, thinking that his father was calling him, walked into the living room to speak again with his father. His father was pacing and when the petitioner entered the room grabbed him again by the neck. The petitioner pulled the knife from his pocket. His father released his grip momentarily, then again grabbed him by the throat and, shouting profanities, threw him against the wall. The petitioner's vision blurred and he again was having trouble breathing. He attempted to stab his father in the arm to force him to release his grip. There was a struggle. The father was stabbed several times. The petitioner ran out the front door and his girlfriend followed.

The petitioner was covered with blood and holding the knife in his hand, in a daze. He was bleeding from the mouth, had more profound red marks on his neck than before, and had a damaged tooth. They walked together through the woods behind the house to a convenience store, discarding the knife on the way, and from there called 911. They returned to the petitioner's house and called 911 a second time. The police arrived and took the petitioner into custody. He gave a full statement and showed the police where he had thrown the knife.

The defense was self defense. However, the court, over objection, charged the jury as follows:

"[T]here are circumstances under which the use of physical force and deadly physical force are not justified. A person may not use deadly physical force upon another when he knows he can avoid it by [sic] complete safety by retreating. In this regard, consider whether the defendant knew he could leave and safely withdraw from the threat, or whether safe retreat was impossible from his victim, and whether he was aware of that situation. A defendant must get away from there before standing his ground and returning deadly force with force, assuming, however, he knows it is safe to do so.

"Now there is an exception to the duty to retreat. Our law says that a person is not required to retreat if he is in his dwelling and he was not the initial aggressor. However, if both antagonists have the same dwelling, the defendant does have a duty to retreat, since the law discourages familial high noon showdowns. So the question arises, was this the victim's dwelling? Dwelling is defined as a building which is usually occupied by a person lodging therein at night whether or not a person is actually present. A resident is one who resides in a place, one who dwells in a place for a period of some duration. The definition of dwelling requires usual customary or routine occupancy. In short, in the words of our Supreme Court, occupation for some period of duration. Let me repeat that. Occupation for some period of duration.

"In determining whether 41 Maher Avenue was the victim's dwelling, you should look at whether he occupied this house for some period of duration at or about the time in question. Under our law a person may have more than one dwelling, for instance, a house and a beach house. There was testimony in this case that the victim

was married to Jane Adams, that he owned the house, that he had the key to the house, that because of difficulties they agreed that he would not stay there over the long weekends of Friday, Saturday, Sunday, and Monday, but that he would stay there Tuesday, Wednesday, Thursday, or would be able to if he wished. Mrs. Adams testified that she did not always know, however, when he was coming or not coming. There is evidence that the incident in question occurred on October 12, 1993, which was I am informed a Tuesday, which was one of the victim's agreed days at the house.

"You should decide whether the victim was in his dwelling when he was stabbed. If you find that he was, the defendant who had the same dwelling, had a duty to retreat if he knew he could do so with complete safety. If, however, you find that the victim was not in his dwelling when he was stabbed, the defendant who was in his dwelling, has no duty to retreat if he was not the initial aggressor. This is a question of fact for the jury."

When the court convened the following morning, the jury sent a note requesting "a detailed explanation of self defense." The note added: "Please, we need this defense. We've got to hear it." (May 10, 1996, trial transcript, p. 2.) The court then re-read its instruction from the previous day.

Within two hours, the jury returned a verdict of guilty on the second count, alleging that the death resulted from reckless conduct creating a grave risk of death. The now 18-year-old petitioner was sentenced to

7-1/2 years of imprisonment, to be followed by a period of probation.

REASONS FOR GRANTING THE WRIT

THE COURT'S CHARGE ON SELF-DEFENSE VIOLATED THE PETITIONER'S DUE PROCESS RIGHT TO TRIAL BEFORE A JURY PROPERLY INSTRUCTED ON THE THEORY OF DEFENSE SUPPORTED BY THE EVIDENCE IN THIS CASE.

If the defendant in a criminal trial asserts a recognized legal defense and the evidence indicates the availability of that defense, such a charge is obligatory and the defendant is entitled, as a matter of law, to a theory of defense instruction. The defendant's right to such an instruction is founded on the principles of due process. Self-defense is a recognized legal defense. *Washington v. Texas*, 388 U.S. 14, 19 (1967); *State v. Carter*, 232 Conn. 537, 554; 656 A.2d 657 (1995). The evidence in this case unquestionably required a charge on self defense.

"The class of crimes in prevention of which a man may, if necessary, exercise his natural right to repel force by force to the taking of the life of the aggressor, are felonies which are committed by violence and surprise; such as murder, robbery, burglary, arson, breaking a house in the day time with intent to rob, sodomy and rape. Blackstone says: 'Such homicide as is committed for the prevention of any forcible and atrocious crime is justifiable by the law of nature; and also by the law of England, as it stood as early as the time of Bracton. . . . ' " *State v. Moore*, 31 Conn. 479, 483 (1863).

Due process of law under the Fourteenth Amendment mandates that the state has the burden of disproving beyond a reasonable doubt the existence of self defense. *E.g., Government of the Virgin Islands v. Smith*, 949 F.2d 677 (3d Cir. 1991); *Smart v. Leeke*, 856 F.2d 609 (4th Cir. 1988); *Tennon v. Ricketts*, 642 F.2d 161 (5th Cir. 1981); *Holloway v. McElroy*, 632 F.2d 605 (5th Cir. 1980); *Isaac v. Engle*, 646 F.2d 1129 (6th Cir. 1980).

The court denied the petitioner due process of law in its instructions on the issue of whether the petitioner's father "dwelled" in the house where he was killed.

For purposes of the "duty to retreat" in a self-defense case, the word "dwelling" is defined by General Statutes section 53a-100(a)(2). Conn. Gen. Stat. section 53a-19(b). The word "dwelling" "means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present". There is no way that the agreed-upon facts of this case could support a finding that the deceased here occupied the house of his demise as his "dwelling" under this definition. Yet the court not only submitted that issue to the jury; it actually provided the jury with instructions which, as defense counsel protested in his exception to that part of the charge, "directed the jury in effect to find that Mr. Adams, Sr. was a dweller at the residence at the time in question."

Yet in its marshalling of the evidence, and throughout its charge, the court pressed the jury in every way it could short of an explicit direction, to find that the deceased occupied the petitioner's house as his "dwelling". When the court's marshalling of the evidence is contrasted to the evidence actually before the jury, it is

readily apparent that the court was advising the jury of its own opinion on the issue.

Reading this portion of the jury charge, it is difficult even for an experienced lawyer who knows the participants to escape the sense that the judge in this case really thought the defendant should be convicted. If a lawyer has that problem – trial counsel told the court he considered the charge on this issue the equivalent of a directed verdict for the state – how impossible would such a task have been for a lay jury? As this court has observed, it is virtually a truism that the trial judge's opinion of the case is "necessarily and properly of great weight and his lightest word of intimation is received with deference, and may prove controlling." *Quercia v. United States*, 289 U.S. 466, 470 (1933).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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